

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

TODD SPOTH,

Plaintiff,

v.

JOHNNY DANG & CO., and
TUAN A. DANG a/k/a JOHNNY DANG,

Defendants.

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Civil Action No.:

COMPLAINT AND JURY
DEMAND

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, TODD SPOTH (“Spoth” or “Plaintiff”), brings this complaint in the United States District Court for the Southern District of Texas against JOHNNY DANG & CO. (“Johnny Dang”), and TUAN A. DANG a/k/a JOHNNY DANG (“Tuan”), (collectively “Defendants”) and alleges as follows:

PARTIES

1. Plaintiff is an experienced commercial photographer, art director, and multimedia producer specializing in editorial, corporate, and advertising photography with an emphasis on creative portraiture. Plaintiff has worked in the music and entertainment industry and has garnered countless awards internationally from organizations like PDN, Billboard and The Society of Publication Designers. Plaintiff is a Gold Remi award-winning documentary film producer and has taught photography classes for Canon and the NFL. Plaintiff resides in Houston, Texas.

2. On information and belief, Johnny Dang is a Domestic For-Profit Corporation existing under the laws of the state of Texas, with headquarters in Houston, Texas. Johnny Dang is a

jewelry business specializing in diamond and gold mouthpieces known as “grills.” Johnny Dang owns, operates, and is solely responsible for the following websites: www.shopjohnnydang.com, www.johnnydangandco.com, and www.tvjohnny.net. Johnny Dang’s Instagram account, www.instagram.com/johnnydangandco, has 2.2 million followers. Johnny Dang’s websites and social media platforms reach viewers throughout the world.

3. On information and belief, Tuan is an individual residing in Houston, Texas. Tuan is the President and Director of Dang.

JURISDICTION AND VENUE

4. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).

5. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).

6. This Court has personal jurisdiction over Defendants, and venue in this District is proper under 28 U.S.C. § 1391(b), in that the events giving rise to the claims occurred in this district, Defendants engaged in infringement in this district, Johnny Dang and Tuan reside in this district, and Defendants are subject to personal jurisdiction in this district.

7. Defendants are subject to personal jurisdiction in Texas.

8. This Court also has personal jurisdiction over Defendants, and venue in this District is proper under 28 U.S.C. § 1400(a).

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

9. Plaintiff captured the photograph, “190926 JOHNNY DANG 1290.JPG,” (“Copyrighted Photograph”) [Exhibit 1] on September 25, 2019 in Houston, Texas on assignment for Texas Monthly Magazine (“Texas Monthly”).

10. Plaintiff registered Copyrighted Photograph with the United States Copyright Office on November 6, 2020 (Registration No.: VA 2-222-225). [Exhibits 2].

11. On February 26, 2021, Plaintiff filed Complaint for Copyright Infringement in this Court. [Case Number 4:21-cv-00645, *Todd Spoth v. Johnny Dang & Co. et al*, The U.S. District Court for the Southern District of Texas] (“First Lawsuit”).

12. On October 28, 2021, the parties to First Lawsuit resolved the case and executed a Confidential Settlement Agreement and Release (“Agreement”).

13. As a result of First Lawsuit and Agreement, Defendants possessed explicit knowledge Plaintiff possessed exclusive copyright to Copyrighted Photograph.

14. As a result of First Lawsuit and Agreement, Defendants possessed explicit knowledge Defendants use of Copyrighted Photograph constituted copyright infringement.

15. On or about January 1, 2022, Defendants copied and posted Copyrighted Photograph to a large visual display in Defendants’ retail store located at 6224 Richmond Ave., Houston, TX 77057. [Exhibit 3].

16. On or about January 1, 2022, Defendants copied and posted Copyrighted Photograph to a second large visual display in Defendants’ retail store located at 6224 Richmond Ave., Houston, TX 77057. [Exhibit 4].

17. On or about November 1, 2022, Defendants copied and posted Copyrighted Photograph to Defendants Instagram feed, www.instagram.com/johnnydangandco. (Last visited January 20, 2023). [Exhibit 5].

18. Defendants used Copyrighted Photograph to advertise Defendants’ Lunar New Year Party. [Exhibit 5].

19. Copyrighted Photograph was registered with the United States Copyright Office prior to Defendants' infringements of Copyrighted Photograph, and Plaintiff is therefore eligible for statutory damages under 17 U.S.C. § 504-5.

COUNT I: INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. § 101 ET SEQ.

20. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.

21. Plaintiff is, and at all relevant times has been, the copyright owner or licensee of exclusive rights under United States copyright with respect to Copyrighted Photograph, which is the subject of a valid and complete Certificate of Copyright Registration by the Register of Copyrights.

22. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce and distribute the Copyrighted Photograph to the public.

23. Plaintiff is informed and believes Defendants, without the permission or consent of Plaintiff, copied and used Copyrighted Photograph on Defendants' Instagram feed, www.instagram.com/johnnydangandco. In doing so, Defendants violated Plaintiff's exclusive rights of reproduction and distribution. Defendants' actions constitute infringement of Plaintiff's copyright and exclusive rights under copyright.

24. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.

25. As a result of Defendants' infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to actual or statutory damages, including any profits realized by Defendants attributable to the infringement, pursuant to 17 U.S.C. § 504 for Defendants' infringement of Copyrighted Photograph.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- A. Declaring that Defendants' unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act;
- B. Immediately and permanently enjoining Defendants, their officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing Plaintiff's Copyrighted Photograph without consent or otherwise infringing Plaintiff's copyright or other rights in any manner;
- C. Ordering Defendant to account to Plaintiff for all gains, profits, and advantages derived by Defendant by its infringement of Plaintiff's copyright or such damages as are proper;
- D. Awarding Plaintiff actual and/or statutory damages for Defendants' copyright infringement in an amount to be determined at trial;
- E. Awarding Plaintiff his costs, reasonable attorney's fees, and disbursements in this action, pursuant to 17 U.S.C. § 504-5, 17 U.S.C. § 1203(b)(3), and § 1203(b)(5); and
- F. Awarding Plaintiff such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: September 20, 2023

/s/ David. C. Deal

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